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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

No. 703

FRED MEYER, INC., a corporation, and FRED G. MEYER and EARLE A. CHILES, individually and as officers of said corporation, *Petitioners*,

v.

FEDERAL TRADE COMMISSION, *Respondent*.

## PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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## PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Petitioners ("Meyer" hereinafter) pray that this Court grant rehearing of its order of February 13, 1967, denying the petition for writ of certiorari and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in this case as prayed for in the petition filed herein on October 19, 1966, but limited to Question 1 presented by said petition.

### Reasons for Granting Rehearing And Issuing the Writ

In its petition for a writ of certiorari, Meyer sought review of the holding of the court of appeals that it *knowingly* induced discriminations in prices and promotional allowances on the ground that the Federal Trade Commission and the court of appeals disregarded entirely the

standards of proof enunciated by this Court in *Automatic Canteen Co.* v. *Federal Trade Commission,* 346 U.S. 61 (1953).[1] By cross petition (No. 789, this Term) the Commission sought review of the court of appeals' holding that it is not a violation of Section 2(d) of the Robinson-Patman Act for a supplier to grant to a direct-buying retailer promotional allowances which are not made available to a wholesaler. On February 13, 1967, this Court granted certiorari on the question presented by the Commission's cross-petition but denied certiorari on the question presented by Meyer. In granting certiorari to the Commission and denying it to Meyer we believe the Court overlooked or failed to understand the real and ultimate issue in this case.

The question whether Meyer's suppliers violated the Robinson-Patman Act was only the first half of the Commission's burden of proof. Meyer was charged with *knowingly inducing such violations.* Since the court of appeals found no violation in the suppliers' granting of allowances to Meyer and not to wholesalers, it did not reach the question of whether a violation was knowingly induced. If this Court should disagree with the court of appeals and hold that a violation of Section 2(d) can be predicated upon disproportionate allowances as between wholesalers and retailers, the ultimate question of whether Meyer possessed knowledge of illegality must still be decided before the court of appeals' order can be modified. It is this very question, and the standard of proof applicable thereto, that was presented by Meyer's petition for a writ of certiorari. Since the question of guilty knowledge must be reached if the court of appeals' holding on the retailer-wholesaler question is reversed, we respectfully suggest that evenhanded and efficient administration of justice requires granting of certiorari on the first question presented by Meyer's petition.

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[1] In its petition, Meyer also presented the question of whether the order entered by the court of appeals is improperly broad. Meyer does not seek rehearing on this order question.

## Conclusion

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari, limited to the first question presented, issue to the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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## Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

EDWARD F. HOWREY
*Attorney for Petitioners*

Dated: March 6, 1967